

**EXHIBIT 3**  
**continued**



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whatever business-need criteria there might be, then communicate back to the employee whether or not the day or days had been approved.

Q. Prior to the meeting with Ms. Newmark, and Ms. Magone, on September 28th, 2006, was there any discussion about terminating Ms. Newmark's employment?

A. Prior to the discussion on September 28th?

Q. Yes.

A. No.

Q. Did Ms. Magone ever tell you that she was seeking to terminate Ms. Newmark's employment prior to September 28th?

A. Ms. Magone told me that there were attendance and performance concerns, that Ms. Newmark was in her probationary period. And she may have said to me, I'm not sure this is going to work out.

Q. I'm not asking --

MS. NICAJ: Move to strike as non-responsive.

Q. I'm not asking you what she may have said to you. I'm asking you what you recall her

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saying to you.

So, prior to September 28th, 2006,  
did Ms. Magone ever advise you, in words or  
substance, that she was going to recommend  
Ms. Newmark's termination?

A. She told me that was a possibility,  
yes.

Q. She did, okay.  
When did she tell you it was a  
possibility?

A. I can't say an exact date; I don't  
recall.

Q. Did you reduce it in writing  
anywhere?

A. No.

Q. Why not?

A. It would not be something that is  
required, nor was it my practice to do so.

Q. You didn't reduce the fact that  
Ms. Newmark complained to you about ageism in  
writing; right?

A. I have already answered that  
question.

Q. Is that right?

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meeting?

A. AS I recall, I spoke first at the meeting.

Q. What did you say?

A. I introduced the meeting by saying that -- thanking both of them for coming, and saying that we were there to try to address Carole's concerns and that we had all agreed that that was best done probably in person. That is the substance of what I said.

Q. What happened next?

A. AS I recall, Cathy offered her explanation to Carole of her use of the word "young."

Q. What did Ms. Magone say?

A. She said that she wanted to be clear that Nicole's age or Carole's age had nothing to do with her decision for the assignment of the palliative-care project. She said that she thought Carole had taken her use of the word "young" out of context. And what she recalled saying was that Nicole was younger in her career; she was eager to learn; was soaking things up like a sponge.

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She reminded Carole that Carole had been assigned to the mental-health project, as it was thought to be appropriate to her experience.

She advised Ms. Newmark that she had gotten feedback or input from Roseanne O'Hare and Maura DeBene regarding the assignment of a social worker to the palliative-care project.

At some point in the conversation, Cathy Magone referenced to Ms. Newmark the fact that her attendance pattern had not been acceptable to that point. She had concerns about it. And she referenced that she had some performance concerns, as well..

Q. Did she say anything else at this point? This is Ms. Magone.

A. When Cathy Magone referenced that she had some attendance and performance concerns, Ms. Newmark responded by saying that she would like to have detail about the performance concerns.

And Cathy Magone responded by telling her that that particular discussion, the particular discussion we were having was for a different purpose, and that she was prepared to

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provide her with detail, and that would happen during her performance evaluation discussion.

Q. So, you understood that she had not had any performance discussion with her until that time, based on what Ms. --

A. No.

Q. -- what did you understand that to be, then?

A. What I understood it to be was Carole, at that point in time, at that meeting, wanted to go over the detail of performance concerns; and her director telling her that she would be sharing the detail with her in another forum, which was a performance-evaluation discussion.

Q. Well, you mentioned that Ms. Magone was the one who raised the issue of performance; right?

A. She stated that she had attendance and performance concerns, yes.

Q. Isn't it fair to say that Ms. Newmark was just responding to what Ms. Magone had herself raised, her director, as you say?

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used that phrase, her peers, in terms of age, et cetera. I believe the point she was trying to make was that -- I believe she was trying to point out to Carole that age was not a factor in her decision for the program.

Carole had been hired a short time prior to that. So, obviously, in the interview process, you know, one can see, just through the interview process, who they are hiring. And that in fact, if one were to look at the complexion of the group overall, the department, there were many females that Cathy would consider her contemporaries in terms of age. So, I do remember comments to that substance. And I believe it was at that meeting, to the best of my recall.

Q. Do you know how many people were interviewed in connection with the position for which Ms. Newmark had been hired?

A. No.

Q. Do you recall anything else said during this meeting?

A. No.

Q. I'm going to direct your attention

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1  
2 A. Also in number two, where Carole  
3 states "This was a surprise to me, as she has  
4 never brought up any work issues until our  
5 meeting yesterday," I can't say that that is  
6 true.

7 Q. Go ahead.

8 A. Once again, her final statement  
9 under number two that "She should not have to  
10 wait until my evaluation to hear what the work  
11 issues are," I don't have firsthand knowledge of  
12 what communication happened between Ms. Newmark  
13 and her director about the work issues.

14 Number three, where it says, "This  
15 statement is tantamount to saying that I am old  
16 and am not able to absorb information as well,"  
17 I do not recall Cathy Magone saying that during  
18 our meeting.

19 Q. Okay. Apart from, "This statement  
20 is tantamount to saying that I'm old and are not  
21 able to absorb information as well," is  
22 everything else in paragraph three truthful?

23 A. The final sentences in three, "Cathy  
24 does not know what my capabilities are. She has  
25 not taken the time to learn about who I am and



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tantamount to saying that I'm old and are not able to absorb information as well," that is Carole's opinion. I'm not in a position to state whether or not it's a truth.

MS. NICAJ: I'm going to move to object on the basis it's nonresponsive.

Can you repeat my last question.

*(Question read)*

A. To the best of my recall, the first two sentences of item number three are accurate.

Q. What else do you recall concerning the meeting?

A. Well, I recall that my impression, as I listened to the dialogue between Carole and Cathy, was that Carole was fixated on Cathy's use of the word "young," that Carole was -- Carole remained visibly angry about Nicole's assignment to the palliative-care project.

Q. What do you recall being said at this meeting?

A. Being said by everyone at the meeting?

Q. Yes.

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A. You're asking me to recount the entire meeting again?

Q. Apart from what you have already said; this was the sum and substance of what you recall about this meeting?

A. Yes.

Q. And when -- getting back to paragraph three, the second sentence states, "She --" referring to Ms. Magone, "-- stated that she did say that Nicole was young and could take things in like a sponge."

Do you see that?

A. Yes.

Q. That was truthful that Ms. Magone said at that meeting -- that she did say Nicole was young and could take things in like a sponge?

A. Cathy did say she had used the word "young" in her initial discussion with Carole. And I remember her saying that part of what she meant was that Nicole was eager to learn and could take things in like a sponge.

Q. Did Ms. Magone say what is contained in the second sentence of paragraph three?

MR. KEIL: I believe the

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question is, are those the words, the  
precise words that Ms. Magone used?

Q. At the meeting.

A. I don't recall that as being an  
exact quote from Cathy Magone.

Q. Did you ever dispute what  
Ms. Newmark wrote in the e-mail to you?

A. Dispute in what sense?

Q. Did you relay and say, your  
recollection of the meeting was inaccurate?

A. No.

Q. Do you recall anything else that was  
said by Ms. Newmark at this meeting?

A. Not that I recall, no.

Q. Do you recall anything else that was  
said by Ms. Magone at this meeting?

A. I think that during this meeting,  
that when Cathy was speaking to Carole about her  
assignment to the mental-health project, that  
Cathy made a statement to the effect that  
regarding the mental-health project, that Carole  
had not advanced the project or been proactive,  
or words to that effect, to make any progress on  
the project, to date.

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Q. And then the third time, there was a meeting with you, Ms. Magone, and Ms. Newmark; right?

A. Yes.

Q. And she, again, communicated her dissatisfaction of the results of it; is that right?

A. Yes.

Q. What did you do after you received what is marked as Plaintiff's 5?

A. After receiving this e-mail, I went back to Cathy Magone and advised her that Carole's concern remained; she was still not accepting of Cathy's explanation and that she had some additional questions.

Q. Did you communicate this in writing or verbally?

A. I think I forwarded Carole's e-mail to Cathy.

Q. Apart from forwarding that e-mail -- well, withdrawn.

You actually told Ms. Magone all these things about Ms. Newmark's remaining concerns?



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A. I don't recall if I spoke to her and reiterated what was in the e-mail, or forwarded the e-mail so that she could see the detail, herself.

Q. So, when you said you advised her, that is not accurate; is that right?

A. I'm sorry. Could you rephrase the question?

Q. When you told -- when you previously testified that you advised Cathy Magone of Ms. Newmark's continued concerns, that is not accurate; is that right?

A. Are we talking about subsequent to my receipt of this e-mail dated September 29th?

Q. That's correct.

A. When I say I advised Cathy, what I mean is, I made her aware. Whether I made her aware verbally, or forwarded Carole's e-mail to her directly, or both, I don't recall specifically.

Q. Did you communicate -- apart from the e-mails, did you communicate, by telephone or in person, with Ms. Magone about Ms. Newmark's continued concerns?

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2 final meeting with Carole.

3 Q. Do you recall having any  
4 communication with Ms. Magone, as you sit here  
5 today, prior to what you term as the final  
6 meeting with Ms. Newmark?

7 A. Yes. I recall speaking with Cathy  
8 about the fact that, in her estimation, Carole  
9 was not going to successfully complete her  
10 probationary period and that it was her decision,  
11 based on the attendance and ongoing performance  
12 concerns, to separate employment.

13 Q. When did you communicate with  
14 Ms. Magone concerning that?

15 A. I don't recall exactly, but it would  
16 have been prior to the final meeting, because we  
17 would have scheduled a final meeting. So, I'm  
18 sure we had to communicate about when and where  
19 we would meet with Carole.

20 Q. Do you recall what the communication  
21 was - was it by telephone, in person, via e-mail,  
22 some other form - with Ms. Magone?

23 A. I don't recall that it was by  
24 e-mail. To my best recall, it was probably a  
25 combination of telephone and perhaps brief,

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2 one-on-one meeting between Cathy and myself.

3 Q. I don't want you to speculate.

4 Do you recall actually meeting with  
5 Ms. Magone to the best of your --

6 A. To the best of my recall, we  
7 communicated by telephone.

8 Q. Prior to what you term as the final  
9 meeting with Ms. Newmark, on how many occasions  
10 from September 28th - the day in which you met  
11 with both Ms. Newmark and Ms. Magone - and that  
12 final meeting, did you communicate with  
13 Ms. Magone?

14 A. I can't say for sure how many times.

15 Q. Can you approximate the number?

16 A. Approximately two, possibly three.

17 Q. Are you including, as a source of  
18 communication, the e-mail you forwarded to  
19 Ms. Magone, or something else?

20 A. No, I was not including that e-mail.

21 Q. So, the two to three communications  
22 concerned Ms. Newmark's termination; is that  
23 right?

24 A. Yes.

25 Q. How long after that meeting did you

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have the first communication with Ms. Magone?

A. I don't recall the exact date.

Q. What do you recall Ms. Magone saying, in words or substance?

A. I recall going through the detail involving the -- involving Ms. Newmark's attendance. I recall Cathy providing me with the exact dates of Ms. Newmark's unplanned absences, which were not inclusive of the time off that had been approved for the colonoscopy. And I recall speaking with Cathy Magone specifically about the performance concerns.

Q. What do you recall her saying about the performance concerns to you?

A. She told me that she had counseled Carole about -- let me back up for a second. She told me that they had been at -- I believe what they call the length-of-stay meeting that involved Carole and other social work -- members of the social work and case management department. This was, I think, a regular meeting. I'm not sure if it was daily. My sense is that it was. And that at that meeting, Cathy came away concerned because, as was the practice at



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2 those meetings, she would ask people about  
3 specific cases and progress on specific patient  
4 cases. And that when she asked Carole  
5 specifically about her cases, that Carole had not  
6 responded in a way that Cathy thought indicated  
7 that Carole was familiar with her cases or had  
8 made the appropriate progress on them.

9 I believe Cathy said she -- Cathy  
10 happened to have a list of all the patient cases  
11 with her. And when she first asked Carole,  
12 Carole could not even provide her with the name  
13 of one patient that she was working with. And  
14 Cathy produced the list to Carole and reminded  
15 her who the cases were.

16 And Cathy was very concerned that  
17 Carole didn't have at her fingertips the names of  
18 the patients whose cases she was actively working  
19 on at that point. And in Cathy's estimation,  
20 that was unusual and indicated that Carole was  
21 not on top of her responsibilities.

22 Q. When did this meeting take place?

23 MR. KEIL: Which meeting?

24 MS. NICAJ: Length-of-stay  
25 meeting.

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2 A. Cathy told me it had happened  
3 earlier in Carole's tenure.

4 Q. Okay.

5 A. Sometime over the summer, I think.

6 Q. Do you recall whether she asked  
7 Ms. Magone why she didn't know -- withdrawn.

8 Did Ms. Magone state whether she had  
9 asked Ms. Newmark why she didn't know the status  
10 of these cases?

11 A. She didn't state that she had asked  
12 Carole directly, in front of that group, why she  
13 didn't know the status of the case.

14 Q. I'm not asking that.

15 I'm asking, did Ms. Magone state  
16 that she had asked Ms. Newmark why she didn't  
17 know the status of those cases, whether it was in  
18 that meeting or sometime after?

19 A. I'm sorry. Why Cathy Magone  
20 didn't --

21 Q. Why Ms. Newmark didn't know the  
22 status of the cases.

23 A. She did not. Ms. Magone did not  
24 state that.

25 Q. Did you inquire as to whether

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2 Ms. Magone had asked?

3 A. No, I did not inquire.

4 Q. Apart from this issue concerning a  
5 length-of-stay meeting, which was attended by  
6 Ms. Magone and Ms. Newmark, did Ms. Magone say  
7 anything else with reference to performance?

8 A. Yes. She told me that there had  
9 been concerns brought by case managers, who were  
10 part of the same team as Ms. Newmark, regarding  
11 Ms. Newmark's handling of particular patient  
12 circumstances. One involved a patient leaving  
13 the hospital without the appropriate clothing.  
14 And there were concerns about -- concerns stated  
15 by other members of the team directly to Cathy,  
16 regarding Ms. Newmark's lack of appropriate  
17 responsiveness.

18 Q. Do you know how many cases  
19 Ms. Newmark was responsible for?

20 A. The only information I have about  
21 the number of cases she was responsible for, was  
22 I believe -- as I recall, when Ms. Magone was  
23 talking to me about her concern -- about her  
24 concern about the discussion at the length-of-  
25 stay meeting, I recall that Cathy Magone used the

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2 number, four cases, when she said to me that --  
3 and I believe she said it in the regard of, you  
4 know, Ms. Newmark only has four cases, or  
5 something like that, which, to Ms. Magone,  
6 emphasized the fact that she ought to know who  
7 those people are. Ms. Newmark should have known  
8 who those people are and be actively engaged and  
9 be able to give details as to the progress of  
10 those patients.

11 MS. NICAJ: Move to strike  
12 the nonresponsive --

13 MR. KEIL: Object to the  
14 motion.

15 Q. How many cases, to your knowledge,  
16 did Ms. Newmark have at the time you and  
17 Ms. Magone discussed termination after September  
18 28th?

19 MR. KEIL: Just to clarify,  
20 what was the plaintiff's caseload during  
21 that period.

22 MS. NICAJ: Yes, absolutely.

23 A. I would have no way of knowing that.

24 Q. Apart from the case -- the number of  
25 cases that are assigned, what is your knowledge



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2 with respect to what other responsibilities  
3 Ms. Newmark had in her position as social worker?

4 A. I have a general understanding of  
5 what the job is of a social worker at Lawrence  
6 Hospital Center. I do not have the specifics of  
7 caseload or what their length-of-stay  
8 requirements are or -- that is really the  
9 leader's responsibility to monitor.

10 Q. What is your general knowledge as to  
11 what the duties and responsibilities of a social  
12 worker is at Lawrence Hospital?

13 A. My general knowledge of the duties  
14 of the social worker is to -- is as an integral  
15 part of the case management and social work team,  
16 is to, in a timely fashion, see to the needs of  
17 the patient, including participating in the  
18 discharge plan and providing resource and  
19 referral information to the patients and their  
20 families for care, resources available outside of  
21 Lawrence and inside of Lawrence, and basically,  
22 have the patient set up for appropriate discharge  
23 plan and care post-discharge.

24 Q. Did you ever see any written  
25 guidelines as to what the responsibilities of the

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2 social worker were at Lawrence?

3 A. In my tenure at Lawrence, I had  
4 occasion to review many of the job descriptions.  
5 It's entirely possible that I had read the job  
6 description of the social worker. I may have  
7 also seen the job posting for whenever we had a  
8 vacancy of social worker, which would have given  
9 some information about the role and  
10 responsibilities.

11 Q. Going back to your first  
12 communication with Ms. Magone, concerning --  
13 after September 28th, concerning Ms. Newmark,  
14 what, if anything else, did Ms. Magone relate to  
15 you with respect to Ms. Newmark?

16 A. Ms. Magone pointed out to me that at  
17 that time, she had become aware that Ms. Newmark  
18 had failed to bring her up to speed regarding  
19 some communication from -- I believe it was from  
20 an RN, who was also assigned to the mental-health  
21 project that Ms. Newmark was responsible for.  
22 Ms. Magone expressed that as a concern, because  
23 she had been prompting Ms. Newmark to say, what  
24 progress have you made on this project, and was  
25 disappointed that there was no progress that

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2 Ms. Newmark could refer to.

3 Q. What was the project?

4 A. The mental-health project that  
5 Ms. Newmark was assigned to.

6 Q. Do you know when she was assigned to  
7 that project? Did Ms. Magone tell you?

8 A. I don't know the exact date. I  
9 believe there was a training that Ms. Newmark and  
10 one of the registered nurses attended. I don't  
11 know the exact date of it.

12 Q. Did you seek to ascertain when that  
13 training was held?

14 A. I recall asking Ms. Magone if enough  
15 time had elapsed from the time that Ms. Newmark  
16 was assigned to the mental-health project, to the  
17 time we were speaking, that she would have  
18 expected some progress to be documented.

19 And she said, yes, it had been -- I  
20 don't recall exactly what she said, but it had  
21 been at least several weeks.

22 Q. What does "enough time" mean? What  
23 do you mean by "enough time"?

24 MR. KEIL: Objection as to  
25 form. Rephrase.

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about mental health?

A. No.

Q. Any other concerns that Ms. Magone raised to you?

A. Ms. Magone said that she felt that Carole had not adjusted -- or maybe wasn't suited to the case-management model that was used at Lawrence Hospital Center, that we had a discussion about Carole's having come from a very different work environment. Just prior to working at Lawrence, she had been, I believe, in an outpatient behavioral-health or mental-health setting. And Cathy and I talked about the differences between the daily work responsibilities in that setting, versus an inpatient, acute-care setting, as it relates to the goals of the department length-of-stay requirements, the insurance consideration for someone's discharge plan, et cetera.

We talked about some business criteria for success in the role of social work. And Cathy told me that she really did not feel that Carole had demonstrated that she was either willing to, or capable of being successful, given